IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
No. 10-762V
Filed: August 26, 2011
Not for Publication

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CHARLA LINDSEY CRABBE and RUSSELL CRABBE, legal representatives of a minor child, Rory Crabbe,	*	Thrombocytopenia Purpura; Measles, Mumps, Rubella and Varicella Vaccines; Six Month Requirement; Residual Effect or Complication
Petitioners,	*	
v.	*	
SECRETARY OF HEALTH AND HUMAN SERVICES,	*	
Respondent.	*	
* *		

DECISION[1]

Vowell, Special Master:

On November 8, 2010, Charla Lindsey Crabbe and Russell Crabbe ["petitioners" or "Mrs. and Mr. Crabbe"] filed a petition for compensation under the National Vaccine Injury Program, 42 U.S.C. §§ 300aa-10 to -34 [the "Vaccine Act" or "Program"],[2] on behalf of their minor son, Rory Crabbe ["Rory"]. The petition alleged that the measles, mumps, and rubella ["MMR"] and varicella vaccines Rory received on March 26, 2009, caused him to develop idiopathic thrombocytopenic purpura ["ITP"].[3] Pet. ¶ 6. After

[1] Because this decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

[2] National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

[3] ITP is a condition defined by a decrease in blood platelet count, which causes bruises, petechiae, and other bleeding in the skin, mucous membranes, or serosal surfaces. *See infra* Part II-B-1.

considering the record as a whole,[4] I hold that petitioners have failed to establish their entitlement to compensation.

Under the Vaccine Act, the petitioner bears the burden of proving a vaccine-caused injury. There are two ways causation may be demonstrated. First, a petitioner may establish a "Table"[5] injury. Alternatively, a petition may prove that a vaccine listed on the Table actually caused or significantly aggravated an injury (an "off-Table" injury). To establish a Table injury petitioner must show: (1) receipt of a vaccine listed on the Table; (2) an injury listed on the Table for that vaccine; and (3) that the injury occurred within the time period specified for that injury and vaccine. § 300aa-11(c)(1)(C)(i); § 300aa-14, as revised by 42 C.F.R. § 100.3 (2010); *see also Walther v. Sec'y, HHS*, 485 F.3d 1146, 1149 (Fed. Cir. 2007). Proof of these three elements excuses petitioner from producing evidence of vaccine causation of the claimed injury. The causal link is established as a matter of law when preponderant evidence demonstrates the Table's requirements. *See Grant v. Sec'y, HHS*, 956 F.2d 1144, 1148 (Fed. Cir. 1992). For an off-Table injury case, a petitioner must show preponderant evidence of "(1) a medical theory causally connecting the vaccination to the injury; (2) a logical sequence of cause and effect showing the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between the vaccination and the injury." *Althen v. Sec'y, HHS*, 418 F.3d 1274, 1278 (Fed. Cir. 2005). *See* §§ 300aa-11(c)(1)(C)(ii); 300aa-13(a).

Additionally, in both Table and off-Table cases, petitioner must establish by a preponderance of the evidence: (1) the vaccine was administered in the United States, or that one of the statutory exceptions to this requirement applies; (2) the injury persisted for more than six months; and (3) has not previously collected an award for damages in connection with vaccine-related injury.[6] These are separate prerequisites to recovery that petitioners must satisfy even if causation is otherwise established.

Although petitioners in this case allege a cause-in-fact injury (Pet., ¶ 6) the facts suggest a colorable Table injury claim, given the timeframe between vaccination and the onset of ITP symptoms.[7] However, regardless of the causation theory utlized in this

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[4] *See* § 300aa–13(a)(1): "Compensation shall be awarded...if the special master or court finds on the record as a whole–(A) that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa-11(c)(1)." *See also* § 300aa–13(b)(1) (indicating that the court or special master shall consider the entire record in determining if petitioner is entitled to compensation).

[5] *See* § 300aa-11(c)1(C); 42 C.F.R. § 100.3 (2010).

[6] *Walther v. Sec'y, HHS*, 485 F.3d 1146, 1149 n.2 (Fed. Cir. 2007) citing §§ 300aa-11(c)(1)(B), (D), & (E).

[7] Rory began developing symptoms in April 2009, roughly two weeks after receiving his vaccination on March 26, 2009. Petitioners' Exhibits ["Pet. Exs."] 6, p. 6; 7, p. 131; 9, pp.1,3. The vaccine injury table creates a presumption of causation for thrombocytopenic purpura manifesting 7-30 days after vaccination, defining thrombocytopenic purpura as:

case, the claim for compensation fails because the claimed injury, ITP or sequelae thereof, did not persist for longer than six months. The evidence fails to demonstrate that Rory suffered residual effects of ITP for more than six months.

I. Relevant Medical History.

Rory was healthy at birth in January 2008. *See generally* Pet. Ex. 4. Over the course of his first year, Rory was seen for a number of common childhood illnesses.[8] Rory received routine vaccinations on February 22, 2008, with boosters administered on May 9, 2008 and September 4, 2008. Pet. Ex. 9, pp. 1-2.

On March 26, 2009, Rory was seen by his primary physician, Dr. Gerdsen, for nasal congestion. Rory also received MMR and varicella vaccinations at this visit. Pet. Ex. 9, pp. 1, 3. On April 11, 2009, Rory's mother noticed an unusual rash on his neck as well as a scattered rash on his wrist and ankles, and brought him to the emergency room ["ER"] for evaluation. *See generally* Pet. Ex. 6, pp. 1-8. A complete blood count ["CBC"][9] was ordered, which returned a markedly low platelet count of 3.[10] Pet. Ex. 6, pp. 9-10. On April 12, 2009, Rory was diagnosed with "severe thrombocytopenia, probably [ITP] initiated as an immune response to recent immunizations." Pet. Ex. 6, p.

> A serum platelet count less than 50,000/mm. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions), myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. This does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura (ITP) that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, rhinovirus, human immunodeficiency virus (HIV), adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

42 C.F.R § 100.3(b)(8) (2010).

[8] Pet. Exs. 5, pp. 5, 10-12; 9, pp. 4-7. Rory was seen chiefly for jaundice, earaches, fevers, and congestion. *Id.*

[9] A CBC includes a platelet count, which is "an actual count of the number of platelets (thrombocytes) per cubic millilter of blood. It is performed on patients who develop petechiae (small hemorrhages in the skin), spontaneous bleeding, increasingly heavy menses, or thrombocytopenia." Kathleen D. Pagana & Timothy J. Pagana, MOSBY'S MANUAL OF DIAGNOSTIC AND LABORATORY TESTS (4th. ed. 2010) ["MOSBY'S LABS"] at 416. Platelet counts are used to monitor the course of thrombocytopenia. *Id.*

[10] The number listed in the CBC results is representative of the number of platelets in the thousands, *e.g.*, a count of three represents three thousand platelets. The reference range for normal results may change from laboratory to laboratory, and may also vary by age. *See infra* note 20. The reference range for the April 11, 2009 platelet count was 219-452. Pet. Ex. 6, p. 9.

8. Rory was transferred to Kapiolani Women and Children Hospital (Pet. Ex. 6, pp. 12-19) where his diagnosis was confirmed. Pet. Ex. 7, p. 6. Rory received IVIG[11] and Prednisolone[12] to treat his ITP. *Id.*, pp. 6, 33-35.

On April 13, 2009, two CBCs both indicated continuing low platelet counts, with the first finding a platelet count of 5 and the second a count of 15.[13] Pet. Ex. 7, pp. 7-8, 37-38. Rory also still had some bruising, along with a slight fever and lesions in his mouth. Pet. Ex. 7, p. 22. By April 14, 2009, Rory's platelet count was up to 26. Pet. Ex. 7, pp. 7-8, 26, 38. He was discharged with a prescription for Prednisolone and instructions to follow up with Dr. Gerdsen later in the week. Pet. Ex. 7, pp. 9, 26. No blood transfusions were required during his hospitalization, and a CT revealed no abnormalities. Pet. Ex. 7, p. 6.

Rory was still on Prednisolone at his follow up visit on April 17, 2009, where Dr. Gerdsen noted, "ITP resolving," and Rory's platelet count was up to 148.[14] Pet. Ex. 9, p. 8. By April 23, 2009, although he was brought in for a rash, Rory's platelet count was back in the normal range.[15] Pet. Exs. 5, p. 34; 9, p. 9. Six days later, on April 29, 2009, Rory's platelet counts remained normal,[16] and his mother reported he was doing well. Pet. Exs. 5, p. 36; 9, p. 9.

The medical reports include four platelet counts taken after April 2009,[17] and only one count fell below the listed normal range. On May 6, 2009, the count was 213, slightly below the listed normal range of 219-452. Pet. Ex. 5, p. 37. On May 11, 2009, the last platelet count collected prior to the six month mark after the onset of his ITP,[18]

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[11] Intravenous immunoglobulin (IVIG) is product containing a broad spectrum of immunoglobulin G (IgG). PHYSICIAN'S DESK REFERENCE (58th ed. 2004) ["PDR"] at 816-17. It is commonly used to quickly increase platelet levels. *Id. at 817*; *see infra* Part II-B-2.

[12] Prednisolone is a glucocorticoid steroid used to treat ITP. *See* PDR at 596-97.

[13] The normal reference range listed was a platelet count of 219-452. Pet. Ex. 7, p. 38.

[14] The reference range for platelets was 219-452. Pet. Ex. 5, p. 32.

[15] The CBC showed platelet levels at 340, or 340,000, and the reference range in the lab report was 219-452. Pet. Ex. 5, p. 34.

[16] The platelet count was 300, with 219-452 as the normal reference range. Pet. Ex. 5, p. 36.

[17] May 6, 2009, May 11, 2009, December 6, 2009 and August 25, 2010. Pet. Exs. 5, pp. 37-38; 10, p. 3; 9, p.19.

[18] The vaccines alleged to have caused his ITP were administered on March 26, 2009, and Rory was first seen for symptoms of ITP on April 11, 2009. Because is is impossible to determine precisely when the onset of Rory's ITP occurred, I have used March 26, 2009, as the date of onset for purposes of computing when the six month period began, as that is the date most favorable to petitioners, even though the drop in platelet count undoubtedly began after that that date. Using that date, Rory must have experienced the residual effects of the ITP after September 26, 2009.

was normal.[19] Pet. Ex. 5, p. 38.

On December 6, 2009, Rory's mother noticed redness around his eyes and neck and brought him to the hospital for an evaluation. Pet. Ex. 10, p. 1. An examination revealed "a few fine malar reddened areas, punctate type, above the eyes, sparse appearing, and a few other on the neck noted, but these were scant." *Id*. A CBC returned a normal platelet count of 215.[20] *Id.*, p. 3. The hospital report on December 6, 2009, noted that Rory had an ear infection at the time, and he was taking Zithromax[21] to treat it. Pet. Ex. 10, pp. 1-2. The diagnosis was "1. Bilateral ear infections; 2. Facial exanthema; 3. History of [ITP]." *Id*., p. 2.

Between December 6, 2009 and August 25, 2010, Rory was brought in to Dr. Gerdsen nine times for fevers and other ailments. Pet. Ex. 9., pp. 14-18. On December 7, 2009, the complaint was that Rory had a fever of 102° and was tugging on his ear. Pet. Ex. 9, p. 14. Doctor Gerdsen also noted purple spots in Rory's mouth, and diagnosed him with "possible viral syndrome." *Id.* On February 4, 2010, Rory was diagnosed with viral syndrome and conjunctivitis Pet. Ex. 9, p. 15. His history of ITP was noted. *Id*. In June or July 2010, Rory's mother also brought him in for some bruising on his head that resulted from a fall two weeks before. Pet. Ex. 9, p. 17.[22]

On August 25, 2010, Rory came to Dr. Gerdsen with a runny nose and a recorded fever of 103.4°. Pet. Ex. 9, p. 18. A platelet count, the last count reflected in the records, was taken at the visit and was normal.[23] Rory's mother brought him to the ER on September 2, 2010, and he was diagnosed with an "upper respiratory infection with otitis media [middle ear infection]." Pet. Ex. 9, p. 20. The ER physician reported "no skin rash," and that Rory "has been otherwise completely well." Pet. Ex. 9, p. 20. On September 9 and September 11, 2010, Rory had follow-up appointments with Dr. Gerdsen, and the visit notes do not report any signs of a rash. Pet. Ex. 9, p. 22.

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[19] The platelet count was 259 or 259,000. The reference range was between 219-452. Pet. Ex. 5, p. 38.

[20] There seems to be a contradiction in the laboratory report. Next to the 215 result, the report includes an 'L,' indicating a low result. Pet. Ex. 10, p. 3. However, the listed normal range on this report is between 150 and 400, which would indicate that a count of 215 is normal. *Id.* Additionally, for children the normal range is typically between 150-400 and for infants it is between 200-475. MOSBY'S LABS at 416. Whether Rory is considered an infant or a child, a result of 215 is within the normal range.

[21] Zithromax (azithromycin) is an antibiotic commonly used to treat patients with mild to moderate infections such as otitis media, or ear infection. PDR at 2677-78. In clinical trials, rash was among the most frequent side effects in children treated with Zithromax for acute otitis media. *Id*. at 2679. In children, thrombocytopenia was also a rare side effect of treatment, occurring with a frequency of less than 1%. *Id*.

[22] The exact date of this visit is not completely legible.

[23] The platelet count was 227 within the reference range of 204-405. Pet. Ex. 9, p. 19.

II. The Six Month Rule.

A. Procedural History.

In her report pursuant to Vaccine Rule 4, respondent moved to dismiss this case, contending that Rory did not experience residual effects from his ITP for longer than the statutory requirement of six months.[24] On April 18, 2011, the special master then assigned to this case[25] ordered petitioners to file a response to the motion to dismiss by May 5, 2011. Petitioners failed to meet that deadline, and, to date, no response has been filed.

It appears that petitioners were aware of the statutory requirement that a vaccine injury must persist for longer than six months, and attempted to finesse the issue in their petition. The petition does not directly assert that Rory's condition persisted longer than six months. Instead, petitioners have tried to satisfy the six month requirement by contending that there are requirements for "future follow-up care and monitoring of his platelet levels until the condition [ITP] resolves." Pet., ¶ 7. As Rory's ITP was resolved at the time the petition was filed on November 8, 2010, petitioners can only be contending that the possible need for care, should Rory experience a recurrence of his ITP, satisfies the six month rule.

B. Factual Determinations.

The primary factual issue is whether Rory's ITP was resolved prior to six months after the onset of his symptoms on April 11, 2009. Absent a determination that Rory's ITP persisted beyond this time, petitioners cannot meet the requirement under § 300aa-11(c)(1)(D)(i). Thus, they would not be entitled to compensation for Rory's injury.

I conclude that Rory did not suffer "residual effects" of ITP after his platelet counts normalized and he was no longer taking any drugs to correct his platelet counts. Rory's platelet counts were normal and he was no longer taking the drugs used to treat his ITP by mid-May 2009. To explain why I reach this conclusion, some background knowledge of ITP is helpful.

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[24] Petitioners must have:

> (i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine, or (ii) died from the administration of the vaccine, or (iii) suffered such illness, disability, injury, or condition from the vaccine which resulted in inpatient hospitalization and surgical intervention.

§ 300aa-11(c)(1)(D).

[25] The case was reassigned to me on June 23, 2011. *See* Order, filed June 23, 2011.

1. Natural History.

Idiopathic thrombocytopenic purpura, also referred to as immune thrombocytopenic purpura or ITP, is defined by a decrease in blood platelet count, which causes bruises, petechiae, and other bleeding in the skin, mucous membranes, or serosal surfaces.[26] It is not directly associated with any definable systematic disease, but it often follows a systemic infection.[27] There are two forms of ITP.[28] The acute form is more common in children, and has a sudden onset with resolution within a few months.[29] The second form, chronic ITP, is more common in adults and can be recurring.[30]

2. Symptoms and Treatment.

The symptoms of new-onset ITP are usually mild, and include bruising, petechiae, and occasional minor epistaxis.[31] Treatment is geared toward inducing a rapid rise in platelet count and may include IVIG for one to two days and Prednisone for two to three weeks or until the platelet count increases to near-normal levels.[32] These medications may also be used to treat any exacerbations of ITP, which usually occur several weeks after initial treatment.[33]

C. Applying the Facts to the Law.

The medical records do not support that Rory suffered residual effects of ITP for more than six months after its onset. Rory did have minor health problems after the six month window, but these problems were not associated with his ITP. Where the petitioner cannot establish that current problems are related to the vaccine injury, there is no residual effect. *See Song v. Sec'y, HHS,* 31 Fed. Cl. 61, 63 (Fed. Cir. 1994) (upholding denial of compensation because petitioner failed to establish a causal connection between child's current learning and speech disability with the residual

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[26] *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (31th ed. 2007) ["DORLAND'S"] at 1580; Robert Kliegman, Richard Behrman, Hal Jenson, and Bonita Stanton, NELSON TEXTBOOK OF PEDIATRICS (18th ed. 2007) ["NELSON'S"] at 2082. Additionally, 45 C.F.R. § 100.3(b)(8), defines thrombocytopenic purpura by a serum platelet count less than 50,000.

[27] DORLAND'S at 1580.

[28] *Id*.

[29] *Id.*

[30] *Id*.

[31] NELSON'S at 2083. Epistaxis is the medical term for the common nose bleed. DORLAND'S at 643.

[32] NELSON'S at 2084. Although Rory was given Prednisolone for one week rather than Prednisone for 2-3 weeks, both medications can be used to treat ITP. *See* Pet. Ex. 7, p. 9; PDR at 596-97.

[33] NELSON'S at 2084.

seizure disorder experienced after DPT vaccine). Only the symptoms that manifest because of the vaccine related injury are the "residual effects" of that injury. *See Parsley v. Sec'y, HHS,* No. 08-78v, 2011 WL 2463539, at *16 (Fed. Cl. Spec. Mstr. May 27, 2011) (defining residual effect, according to medical definition, as "something left behind or resulting from an illness, disability, injury or condition"). Diagnosis and treatment of symptoms that are not attributable to the injury are not residual effects of the injury. *Id.*

1. Symptoms After Six Months.

Rory's problems after the six month period were unrelated to his ITP. Symptoms of a rash or petechiae, accompanied by a low platelet count, would demonstrate a return of his ITP. Rory never demonstrated both.

None of the several illnesses Rory experienced after October 2009 were attributed to his ITP by the medical professionals who treated them. First, although Rory had a rash on December 6, 2009, the hospital report indicated that the reddened areas were "sparse" and "scant". Pet. Ex.10, p. 1. More importantly, a CBC returned a platelet count of 215, which is within the healthy range.[34] Without an indication of low platelet levels, a rash alone is not enough to establish ITP, particularly since the medication Rory was taking had a rash as a known side effect.[35]

A second sign that symptoms might have returned was on December 7, 2009. Doctor Gerdsen noted sores in Rory's mouth that looked like purple spots. Pet. Ex. 9, p. 14. Doctor Gerdsen, who was well aware of Rory's history of ITP, did not mention these sores as a possible recurrence of the ITP nor did he order a CBC. Thus, he apparently did not consider these sores as evidence of a recurrence. Doctor Gerdsen did not suggest any follow up appointments either.[36] On this visit, Dr. Gerdsen's diagnosis was "possible viral syndrome." *Id*.

Additionally, any mention of redness in visits after the December 6, 2009 evaluation was attributed to conjunctivitis.[37] No physician who saw Rory after October 2009 diagnosed a recurrence of Rory's ITP.

2. Increased Risk of Recurrence

Because ITP takes two forms, single occurrence (acute) and relapsing (chronic),

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[34] *See supra* note 20.

[35] *See supra* note 21.

[36] A CBC performed was perfomed eight months later, on August 25, 2010, and Rory's platelets were in the normal range. *See* Pet Ex. 9, p. 19.

[37] Rory was diagnosed with conjunctivitis on February 4, 2010 and again on May 27, 2010. Pet. Ex. 9, pp. 15-16.

there is a possibility that Rory's ITP could recur. However, a mere increased risk of a recurrence of an injury, without an actual recurrence, is not medically recognized as a residual effect within the meaning of § 300aa-11(c)(1)(D)(i). *Parsley*, 2011 WL 2463539, at *18, *21. *See also Toebe v. Sec'y, HHS,* No. 91-1623V, 1992 WL 101638, at *3 (Fed. Cl. Spec. Mstr. Apr. 23, 1992) (noting that being on medication and considered to have a seizure disorder by a physician is insufficient to establish having a seizure disorder with residual effects that satisfies the six month requirement).

Rory only received medical treatment for his ITP in the weeks immediately following his diagnosis in April 2009. Although Rory's mother sought treatment for him on three subsequent occasions within the six-month window, none of those visits resulted in a diagnosis of returning or exacerbated ITP. The medical records do not indicate Rory was ever placed on medication for ITP, other than the initial treatment of the acute illness.

Although it is possible that the history of ITP prompted Rory's physicians to order blood tests that they might not have ordered otherwise,[38] testing for a possible recurrence is not a "residual effect" within the meaning of the statute. In this way, Rory's case is similar to *Parsley*, where the patient's hospitalization and x-ray were not residual effects of the injury because doctors determined that the patient had not suffered a second intussusception. 2011 WL 2463539, at *16. *Parsley* reasoned that "residual effect" would "refer to something left behind or resulting from an illness, disability, injury, or condition." *Id.* Therefore, it would not appear to encompass the *possibility* of an ill effect remaining after an vaccine injury. Nor would it appear to encompass treatment and diagnosis of an unrelated illness. *Id*. at *16.

3. Lack of Expert Support.

Petitioners ignored the order to respond to the motion to dismiss and failed to introduce expert opinion that Rory experienced any residual effects after the successful treatment of his ITP. Thus, petitioners have failed to meet their burden under § 300aa-11(c)(1)(D)(i) to show that Rory experienced residual effects of his ITP for longer than six months. *See Stuardis v. Sec'y, HHS*, No. 07-261V, 2009 WL 3837479, at *4 (Fed. Cl. Spec. Mstr. Oct. 29, 2009) (requiring petitioner to file an expert report supporting the theory that a low white blood cell count was a residual effect of a hemolytic injury); *Watson v. Sec'y, HHS,* No. 89-92V, 1990 WL 293420, at *3 (Fed. Cl. Spec. Mstr. Sept. 14, 1990) (holding petitioner failed to show any residual effects where there was

[38] A CBC measures, in addition to platelets, the number of red and white blood cells. These measurements and the proportions of subtypes of white cells provide information about possible infections, anemia, and various other blood disorders. As Rory had infections at the time of these visits, it would be pure spectulation as to why the CBCs were ordered.

insufficient data linking vaccine to respiratory problems and patient had otherwise made a full recovery according to medical records).

On March 6, 2009, Dr. Gerdsen opined that Rory's ITP was caused by his vaccinations. *See* Pet. Ex 8. However, this statement of causation does not bear on the issue of whether Rory's symptoms lasted beyond October 11, 2009. The statement neither addresses any need for follow-up testing nor does it mention the likelihood of future occurrence. Without an expert opinion that Rory suffers from chronic ITP, which the record fails to reflect, petitioners are unable to satisfy the six month requirement. The medical records establish that Rory had recovered from ITP prior to October 11, 2009, and was doing well through 2010.[39]

III. Conclusion.

Assuming arguendo that the MMR or varicella vaccines caused Rory's ITP, the residual effects did not persist longer than six months, a statutory requirement. Thus, respondent's unopposed motion to dismiss is GRANTED. The petition is dismissed and the clerk of the court shall enter judgment accordingly.

IT IS SO ORDERED.

s/Denise K. Vowell
Denise K. Vowell
Special Master

[39] When Rory was brought to the ER for a respiratory infection on September 2, 2010, the report noted that Rory was "otherwise completely well". Pet. Ex. 9, p. 20. In fact, the records show that Rory has not had a single incident that could be associated with ITP for over a year. *See generally* Pet. Ex. 9.